

1 LAURENCE PARADIS – Cal. Bar No. 122336
2 JULIA MARKS – Cal. Bar No. 300544
3 DISABILITY RIGHTS ADVOCATES
4 2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
Email: lparadis@dralegal.org

5 TIMOTHY ELDER – Cal. Bar No. 277152
6 TRE LEGAL PRACTICE
7 4226 Castanos Street
8 Fremont, California 94536
Telephone: (410) 415-3493
Facsimile: (888) 718-0617
Email: telder@trelegal.com

9 MICHAEL W. BIEN – Cal. Bar No. 096891
10 MICHAEL S. NUNEZ – Cal. Bar No. 280535
11 ROSEN BIEN GALVAN & GRUNFELD LLP
12 50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
13 Telephone: (415) 433-6830
Facsimile: (415) 433-7104
Email: mbien@rbgg.com
mnunez@rbgg.com

¹⁴ Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

NATIONAL FEDERATION OF THE
BLIND OF CALIFORNIA, MICHAEL
KELLY, MICHAEL HINGSON, and
MICHAEL PEDERSEN.

22 | Plaintiffs.

23 | v.

24 UBER TECHNOLOGIES, INC., RASIER,
LLC, AND RASIER-CA, LLC,

Defendants.

Case No. 3:14-cv-04086-NC

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND RELATED
MOTIONS**

Judge: Hon. Magistrate Nathaniel Cousins
Date: June 8, 2016
Time: 1:00 PM
Crtrm.: 7, 4th Floor

Trial Date: Jun. 13, 2016

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NOTICE OF MOTION AND MOTION

2 PLEASE TAKE NOTICE THAT on June 8, 2016 or as soon thereafter as the matter
3 may be heard, Plaintiffs National Federation of the Blind of California, National
4 Federation of the Blind, Michael Kelly, Michael Hingson, and Michael Pedersen
5 (hereafter, collectively, “Plaintiffs”) and Defendants Uber Technologies, Inc., Rasier LLC,
6 and Rasier-CA LLC (hereafter “the Parties”) will jointly move the Court for (1) approval
7 to file Plaintiffs’ Second Amended Complaint submitted herewith as Ex. 2 to the
8 Declaration of Laurence Paradis (“Paradis Decl.”), (2) preliminary approval of the
9 proposed class settlement agreement (“the Agreement”) submitted herewith as Ex. 1 to the
10 Paradis Declaration, (3) an order certifying the proposed settlement class, (4) an order
11 directing notice to the proposed settlement class, and for a scheduling order setting
12 deadlines for objections and setting a fairness hearing, and (5) final approval of the
13 agreement following a fairness hearing.

In support of this motion, the Parties state:

1. The Agreement represents a comprehensive settlement of the issues raised in the above-captioned case.
 2. The Agreement offers a fair and equitable result to those affected by it.
 3. The Agreement will result in significant long-term benefits both for individuals who are members of the proposed settlement class and for Defendants.

RELIEF SOUGHT

The Parties respectfully request that the Court enter the attached proposed order:

1. Granting Plaintiffs leave to file the Second Amended Complaint attached as Ex. 2 to the accompanying Declaration of Laurence Paradis;
 2. Conditionally certifying a settlement class for injunctive relief under Federal Rule of Civil Procedure 23(a) and (b)(2);
 3. Granting preliminary approval of the Agreement so that the Parties may

- 1 proceed with notice to the class and to a fairness hearing for final approval of
 2 the Agreement;
- 3 4. Directing the proposed form of notice to the settlement class; and
 4 5. Setting a schedule for notice to the class, objections, and a fairness hearing
 5 for final approval of the Agreement.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **INTRODUCTION**

8 This lawsuit and the proposed class settlement agreement address Plaintiffs'
 9 allegations of discrimination against blind individuals who travel with service animals in
 10 the provision of transportation arranged through the Uber mobile software application.
 11 The Agreement, attached as Exhibit 1 to the Declaration of Laurence Paradis ("Paradis
 12 Decl."), is the product of thorough arm's length negotiations, several in-person settlement
 13 meetings, a day-long JAMS mediation session, and exchange of information and numerous
 14 proposals over the past eleven months. The Agreement provides for significant injunctive
 15 relief that will modify Uber's policies, practices, and procedures to ensure that blind riders
 16 with service animals receive reliable access to transportation arranged through the Uber
 17 rider mobile application ("Uber Rider App"), comprehensive monitoring, a method to
 18 adjust the injunctive relief to address unforeseen access issues that arise, and payment of
 19 attorneys' fees and costs. The Parties request an Order from the Court determining that the
 20 settlement is fair and reasonable.

21 Under the Agreement, Uber will implement an array of policies and practices
 22 nationwide to ensure that blind or visually-disabled riders with service animals ("Riders
 23 with Service Animals") receive reliable access to transportation arranged through the Uber
 24 app and to effectively address any discriminatory treatment that Riders with Service
 25 Animals encounter from the transportation providers licensed to use the app ("Drivers")
 26 when attempting to use the Uber Rider App. Uber will revise its national service animal
 27 policy to clarify that no exceptions exist for allergies or religious objections to the Drivers'
 28 contractual and legal obligation to transport Riders with Service Animals, will require that

1 all Drivers who provide transportation through the Uber platform agree to transport riders
 2 with service animals consistent with Drivers' legal obligation as a condition of continued
 3 access to the Uber platform, and will adopt enhanced enforcement mechanisms,
 4 terminating contractual relationships with Drivers who knowingly refuse to transport
 5 Riders with Service Animals, thus preventing them from receiving trip requests through
 6 the Uber platform. Uber will also inform riders who submit service animal complaints
 7 about the result of Uber's investigation of any complaint, including whether Uber severed
 8 its contractual relationship with the driver.

9 The agreement also provides for comprehensive reporting and monitoring on a
 10 national scale, and provides a procedure to further enhance the injunctive relief if
 11 necessary. Under the Agreement, Uber will retain and periodically report aggregate data
 12 concerning service animal complaints, trip and enforcement data associated with each
 13 report asserting that a driver refused to transport a rider with a service animal, and trip data
 14 associated with each ride where Uber charged a rider with a service animal a cleaning fee.
 15 The Agreement additionally provides for a third-party monitor who will review and
 16 evaluate Uber's compliance with the Agreement. Moreover, the Agreement allows the
 17 Parties to modify the injunctive relief to address unforeseen service animal access issues
 18 that class members encounter during the term of the agreement.

19 The Agreement is conditioned on certification of the following proposed class¹ for
 20 settlement purposes:

21 All blind or visually disabled individuals nationwide who travel with the
 22 assistance of Service Animals and who have used, attempted to use, or been
 23 deterred from attempting to use transportation arranged through the Uber
 Rider App.

24¹ The Parties acknowledge and agree that Uber is not, by stipulating to a settlement on a
 25 class basis, waiving any right to seek enforcement of any arbitration agreement and class
 26 action waiver and/or representative action waiver between any proposed class member (or
 27 anyone else) and Uber or any of its subsidiaries or affiliated entities in any other action or
 in any other circumstances. As this is a critical consideration to Uber in agreeing to a class
 settlement, the Parties request that any approval order expressly reference and confirm this
 point.

1 The Parties stipulate that certification of the proposed class under Federal Rule of Civil
2 Procedure 23(a) and 23(b)(2) is appropriate for settlement purposes. The settlement
3 contemplated herein would result in a single set of national policies, practices, and
4 procedures concerning transportation of Riders with Service Animals that is applicable to
5 all class members. Similarly, the modifications to current policies, practices, and
6 procedures in the Agreement will enhance access to transportation arranged through the
7 Uber Rider App for all class members.

8 This settlement is fair, adequate, and reasonable. The settlement process posed
9 difficult factual questions concerning crafting effective relief for the class while
10 accounting for Uber's existing business model, i.e., that the Drivers are independent
11 contractors. The Parties effectively addressed this challenge by negotiating an agreement
12 at arm's length that provides significant benefits to the class and avoids protracted
13 litigation, while not altering the Drivers' relationships with Uber. Accordingly, the Parties
14 respectfully request: (1) approval to file Plaintiffs' Second Amended Complaint, which
15 adds the National Federation of the Blind as a plaintiff and expands the scope of the case
16 by asserting class allegations regarding access to all transportation nationwide arranged
17 through the Uber Rider App, (2) certification of the proposed settlement class under
18 Federal Rule of Civil Procedure 23(a) and 23(b)(2); (3) preliminary approval of the
19 settlement agreement; (4) an order approving notice to the class of the settlement
20 agreement and setting a fairness hearing; and (5) final approval of this agreement at the
21 time of the fairness hearing. The Parties' counsel have negotiated the foregoing and agree
22 to the form and content.

23 The proposed class will upon final approval release all claims for injunctive or
24 declaratory relief relating to the subject matter of the Second Amended Complaint,
25 including claims under the Americans with Disabilities Act and any and all applicable state
26 disability access laws. The named plaintiffs will also release any and all claims for
27 damages, while the class will not release any damage claims that may exist.
28

THE PARTIES

The National Federation of the Blind (“NFB”), a nonprofit corporation, is the nation’s oldest and largest association of blind persons. NFB has affiliates in all fifty states, the District of Columbia, and Puerto Rico. NFB has approximately fifty thousand members nationwide. The National Federation of the Blind of California (“NFB-CA”) is an association of blind Californians and is the California State affiliate of the NFB. The mission of NFB and NFB-CA is to promote the vocational, cultural, and social advancement of the blind and to achieve the integration of the blind into society on a basis of equality with the sighted. Securing reliable access to transportation, including using modern technology, advances the goal of NFB and NFB-CA to ensure that blind individuals may travel in the same way that sighted individuals travel. *See Declaration of Mark Riccobono ¶ 3 (“Riccobono Decl.”); Declaration of Mary Willows ¶ 3 (“Willows Decl.”).*

13 Individual plaintiffs Michael Pedersen and Michael Kelly are legally blind, reside in
14 California, use guide dogs, and allege that Drivers on the Uber platform refused to
15 transport them because of their service animals. Plaintiff Kelly is a member of NFB-CA.
16 Individual Plaintiff Michael Hingson is a legally blind resident of California, uses a guide
17 dog, and is a member of NFB-CA. Mr. Hingson alleges that he is deterred from
18 attempting to use transportation arranged through the Uber Rider App because he has
19 learned from others that Drivers on the Uber platform have refused to transport blind
20 Riders with guide dogs in California and elsewhere on many occasions.

21 Uber Technologies Inc. (“Uber”) is a company that offers a smart phone application
22 (“Uber Rider App”) that connects individuals looking for transportation (“Riders”) with
23 independent transportation providers looking for passengers (“Driver Partners” or
24 “Drivers”). Uber’s platform offers access to multiple different vehicle types based on the
25 rider’s vehicle preference. These categories currently include, for example, UberX,
26 UberPool, UberXL, UberBLACK, UberTaxi, UberSUV, UberSelect, and UberAccess.
27 Rasier LLC and Rasier-CA LLC (hereafter referred to collectively with Uber as “Uber”)
28 are wholly-owned subsidiaries of Uber that provide lead generation services via Uber’s

1 platform to driver partners. Transportation arranged through the Uber Rider App is
 2 available in over 150 metropolitan areas across most states.

PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS

4 NFB-CA and three blind individuals brought this action to challenge alleged
 5 discrimination against blind Riders with guide dogs in the provision of transportation
 6 arranged through the Uber Rider App. Plaintiffs allege that Uber denies blind Riders with
 7 Service Animals full and equal access to the transportation services that Uber makes
 8 available to other Riders. Plaintiffs allege that Uber has violated the Americans with
 9 Disabilities Act, 42 U.S.C. §§ 12101 *et. seq.*, the California Unruh Civil Rights Act,
 10 California Civil Code §§ 51 *et. seq.*, and the California Disabled Persons Act, California
 11 Civil Code §§ 54-54.3. Plaintiffs seek injunctive and declaratory relief under Plaintiffs'
 12 ADA and Unruh Act claims. Plaintiffs Kelly and Pedersen also seek statutory damages
 13 under their state law claims in an amount ranging from \$1,000 to \$4,000 for each occasion
 14 where a driver on the Uber platform allegedly refused to transport them because of their
 15 service animals, and Plaintiff Hingson seeks statutory damages based on his state law
 16 deterrence claims.

17 Uber has denied and continues to deny liability under the federal and state laws at
 18 issue, and further asserts that its current policies, practices, and procedures meet its
 19 obligations under applicable law. Uber has also asserted defenses based on the
 20 applicability of these laws to Uber.

A. Prelitigation Stage And Initial Litigation

22 Prior to initiating this litigation, Plaintiffs notified Uber on June 3, 2014 that
 23 Drivers on the Uber platform had refused to transport plaintiffs and many other blind
 24 individuals because of their service animals. The Parties met but were unable to resolve
 25 the issue, and Plaintiffs initiated this litigation.

26 On September 9, 2014, Plaintiffs NFB-CA and Hingson filed this action in federal
 27 court in San Francisco. Plaintiffs filed a First Amended Complaint on November 12,
 28 2014. The FAC joined Plaintiffs Kelly and Pedersen and Defendants Rasier and

1 Rasier-CA.

2 On December 3, 2015, Defendants filed a Motion to Dismiss for failure to state a
 3 claim against all Plaintiffs based on Plaintiffs' ADA claims and a Motion to Dismiss for
 4 lack of standing against some of the Plaintiffs. Plaintiffs opposed the motion. On
 5 April 17, 2015, this Court issued an order denying Uber's motion to dismiss Plaintiffs'
 6 claims. The Court held that all Plaintiffs possessed standing.

7 **B. Settlement Negotiations And Preparation For Trial**

8 The Parties then complied with the procedures set forth in the Northern District's
 9 General Order 56. On May 1, 2015, the Parties exchanged initial disclosures, and
 10 Defendants answered Plaintiffs' FAC. On May 8, 2015, the Parties conducted a joint
 11 inspection and review and held an initial in person settlement meeting. The Parties held an
 12 additional settlement meeting on June 18, 2015. On August 10, 2015, the Parties held an
 13 all-day mediation before Hon. Jamie Jacobs-May (ret.) at JAMS. At the end of the
 14 mediation, the Parties agreed to the parameters of a settlement with respect to non-
 15 monetary terms and continued to pursue final settlement regarding all other terms.

16 On July 30, 2015, the Court opened discovery, and on August 13, 2015, the Court
 17 set a trial date for April, 2016. Because of the trial schedule, Plaintiffs pursued a two-track
 18 approach, continuing to work toward settlement while preparing for trial. In September,
 19 2015, Plaintiffs provided Defendants with a written settlement proposal. The Parties
 20 continued to engage in settlement negotiations, exchanging settlement proposals and
 21 holding conference calls to discuss these proposals. In addition, beginning October 1,
 22 2015, Plaintiffs served written discovery requests and noticed depositions.

23 In January 2016, the Parties reached an agreement on the key elements of a
 24 settlement. Shortly thereafter, the Parties stipulated and the Court ordered that the
 25 discovery deadlines be vacated, and the Court rescheduled the trial for June 13, 2016. The
 26 Parties continued to negotiate the specific language of certain provisions of the Agreement
 27 and addendums to the Agreement through early April of this year.

SUMMARY OF THE SETTLEMENT

The proposed settlement includes the following terms.

A. Enhanced Dissemination Of Information To Drivers.

4 Uber agrees to enhance distribution of information to Drivers regarding their legal
5 and contractual obligation to transport Riders with Service Animals. Uber will require that
6 new Drivers expressly confirm that they have reviewed, understand, and agree to comply
7 with their legal obligations as outlined in Uber's Service Animal Policy during the on-
8 boarding process and in Uber's mobile application for Drivers ("Driver App"). In
9 addition, both new and existing Drivers will be blocked from receiving trip requests from
10 Riders through the Uber platform until they confirm in an interactive popup notification in
11 the Uber Driver App that they are willing to transport Riders with Service Animals.
12 Drivers that indicate that they are unwilling to transport Riders with Service Animals will
13 be permanently blocked from receiving trip requests through the Uber platform and their
14 contractual relationships with Uber terminated. Uber will also revise its written
15 agreements with Drivers to inform Drivers of their legal obligation to transport Riders with
16 Service Animals and the consequences of refusing to transport Riders with Service
17 Animals.

18 In addition, Uber will send quarterly email reminders to all Drivers for the term of
19 the Agreement reminding them of their legal obligation to transport Riders with Service
20 Animals. Uber has and/or will provide Class Counsel with drafts of the quarterly email
21 reminders and draft revisions to the driver licensing agreement for review and feedback
22 before issuance.

B. Changes To Enforcement Practices Related To Nondiscrimination.

24 Uber will adopt an enhanced enforcement policy, whereby Uber will permanently
25 terminate its contractual relationship with a driver and permanently terminate that driver's
26 ability to receive trip requests through the Uber platform if Uber determines that the driver
27 knowingly refused to transport a rider because that rider was accompanied by a service
28 animal anywhere in the United States. Uber will also permanently terminate its contractual

1 relationship with a driver and permanently terminate that driver's ability to receive trip
 2 requests through the Uber platform if Uber receives plausible complaints on more than one
 3 occasion asserting that a driver unlawfully refused to transport Riders with Service
 4 Animals because of the service animal anywhere in the United States, regardless of
 5 whether the driver's refusal was knowing.

C. Cleaning Fee Policy For Riders With Service Animals

7 Uber will not charge Riders with Service Animals cleaning fees for shedding by
 8 their service animals. Uber will not charge cleaning fees to Riders with Service Animals
 9 for the first two reported messes involving the bodily fluid of the rider's service animal.
 10 Riders with service animals will be able to contest cleaning fees.

D. Changes To Complaint Processing Procedures

12 Uber will modify the incident reporting features within the Uber rider app and on
 13 the Uber website to enhance Riders' ability to effectively and efficiently submit service
 14 animal complaints. Uber will modify the incident reporting form in the Uber Rider App so
 15 that a user can easily mark the submission as a service animal complaint. Uber will place a
 16 link to a similar form that can be easily located from the homepage of Uber's website. A
 17 document presenting the design of the enhanced website and Rider App incident report
 18 forms is attached to the Agreement as Addendum 3.

19 Uber will forward all service animal complaints that it receives to Uber's Access
 20 Complaint Team, a team of employees dedicated to handling disability access complaints.
 21 This team will review and evaluate every report asserting that a driver refused to transport
 22 a rider with a service animal because of the service animal. Uber will notify each rider
 23 who submitted a service animal complaint that Uber is reviewing the complaint. Uber will
 24 make reasonable and good faith efforts to, within one week of receiving the complaint,
 25 inform the complainant of the outcome of Uber's review of the complaint, including
 26 whether Uber has terminated its contractual relationship with the driver who was the
 27 subject of the complaint, and whether Uber has recorded the complaint.

28 Uber will reverse any cancellation or other fees that were charged in connection

1 with an incident that is the basis of a service animal complaint. In addition, Uber will
 2 provide the complaining rider with a \$25 account credit if Uber terminates its relationship
 3 with the driver who is the subject of the complaint. Information will be distributed to the
 4 blind community, either by Uber or in conjunction with NFB or NFB-CA, about the
 5 enhanced methods for submitting service animal complaints, and Uber's policy to
 6 reimburse complaining Riders for trip cancellation charges.

7 Uber will provide the Access Complaint Team and other employees who review
 8 these complaints with a guidance document, attached as Addendum 2 to the Agreement,
 9 that provides step-by-step instructions on evaluating a report that a driver refused to
 10 transport a rider with a service animal because of the service animal. This document also
 11 provides guidance on when charging cleaning fees to Riders with Service Animals is
 12 permissible. Uber will train the Team on identifying situations where a driver has violated
 13 Uber's service animal policy.

14 **E. Revisions To Uber's Service Animal Policy**

15 Uber will adopt a revised written service animal policy that incorporates the
 16 enhanced enforcement policy, enhanced procedures for investigating and acting on service
 17 animal complaints, and the cleaning fee policy for Riders with Service Animals established
 18 by the agreement. The updated document also clarifies that there are no exceptions for
 19 allergies or religious objections to Drivers' contractual and legal obligations to transport
 20 Riders with Service Animals. It further clarifies what questions Drivers may and may not
 21 ask Riders with Service Animals about their service animals under applicable law. The
 22 updated policy is attached to the Agreement as Addendum 4.

23 **F. Compliance Record Keeping And Testing**

24 Uber will collect and retain a national database of information to facilitate
 25 monitoring compliance with the Agreement. This information will include rider, driver,
 26 and trip data associated with each report that asserts that a driver refused to transport a
 27 rider with a service animal because of the service animal, and each ride that results in Uber
 28 charging a rider with a service animal a cleaning fee. It will also include information

1 concerning actions that Uber took with respect to the driver and the rider in connection
 2 with each service animal complaint. Furthermore, it will include the number of service
 3 animal complaints that Uber received and the number of Drivers with whom Uber has
 4 terminated its contractual relationship due to violation of Uber's service animal policy
 5 during the reporting period.

6 Uber will report this data to Class Counsel quarterly for the first year of the term of
 7 the Agreement, biannually for the second year of the term, and annually for the remainder
 8 of the term. However, if the number of service animal complaints significantly increases
 9 or if it is determined that Uber did not comply with the Agreement, Uber will resume
 10 reporting on a quarterly basis for the remainder of the Agreement's term.

11 NFB and NFB-CA will administer a compliance testing program for the term of the
 12 Agreement. The testing program will deploy blind individuals with guide dogs across the
 13 United States who will request and take trips using the Rider App to evaluate Uber's
 14 compliance with the Agreement.

15 **G. Third-Party Monitor**

16 A monitor will be selected to review, evaluate, and report annually on Uber's
 17 compliance with the Agreement. The monitor will propose further modifications to Uber's
 18 policies, practices, and procedures if the monitor concludes that Uber's policies, practices,
 19 and procedures are insufficient to ensure equal access for Riders with Service Animals.

20 The Parties will attempt to jointly select the monitor. If the Parties are unable to
 21 select a monitor, the Parties will each submit three proposed candidates to the magistrate
 22 judge who retains jurisdiction to enforce the Agreement, and the magistrate judge will
 23 select the monitor. This approach will be used to select a replacement monitor if
 24 necessary.

25 Uber will pay the monitor's reasonable fees and costs, which will be originally
 26 capped at \$50,000 for the 3.5 year term of the Agreement, and an additional \$35,000 for
 27 the 1.5 year extension period if the agreement's term is extended. Negotiating increases to
 28 these caps is subject to the Agreement's dispute resolution process.

1 **H. Duration Of The Agreement.**

2 The default term of the Agreement is 3.5 years. However, if the Parties agree or the
 3 monitor determines that Uber did not substantially comply with the Agreement during the
 4 second and/or third year of the Agreement's term, the Agreement's term will extend by 1.5
 5 years to a total of five years.

6 **I. Further Modifications To Uber's Policies, Practices, And Procedures**

7 Beginning one year after the effective date of the Agreement, the Parties may
 8 negotiate additional modifications, upon Plaintiffs' request, to Uber's policies, practices,
 9 and procedures concerning transporting blind Riders with Service Animals. The Parties
 10 included this provision to provide the flexibility to further enhance the injunctive relief if
 11 monitoring reveals it necessary, and to address unintended consequences of the relief or
 12 unforeseen service animal access issues that arise during the Agreement's term. If the
 13 Parties reach an agreement on modifications, it will be memorialized in a binding written
 14 memorandum of understanding. If the Parties are unable to reach an agreement, Plaintiffs
 15 may use the Agreement's dispute resolution process to attempt to secure additional
 16 modifications to Uber's relevant policies, practices, and procedures, but in no event will
 17 the modifications lessen the benefits or protections for members of the settlement class.

18 **J. Dispute Resolution Process**

19 Enforcement of the Agreement will be subject to continuing jurisdiction of the
 20 Court. The Parties request that, upon final approval of the Agreement, Magistrate Judge
 21 Cousins retain jurisdiction to oversee enforcement of the Agreement, including resolving
 22 disputes regarding Plaintiffs' request for attorneys' fees and costs for work performed after
 23 the effective date of the Agreement. If Magistrate Judge Cousins is or becomes
 24 unavailable, the Parties request that the Court appoint another magistrate judge in the
 25 Northern District of California to retain jurisdiction over this matter.

26 The Agreement establishes a three-step procedure for resolving disputes. First, the
 27 Parties will meet and confer to attempt to resolve the dispute. If the Parties are unable to
 28 resolve the dispute within twenty-one days after Plaintiffs' raised the issue and if Uber is

1 willing to pay for a mediation, the Parties will submit the dispute for mediation at JAMS.
 2 Finally, if the Parties are unable to resolve the dispute through mediation, or if the Parties
 3 are unable to resolve the dispute through meeting and conferring within twenty-one days
 4 after Plaintiffs first raised the issue and Uber is unwilling to pay the cost of a JAMS
 5 mediation, the Parties will submit the matter to the magistrate judge who retains
 6 jurisdiction to enforce the Agreement for binding resolution of the dispute.

7 **K. Compensation To NFB**

8 Uber will make three annual payments of \$75,000 to NFB during the first three
 9 years of the Agreement's term. If the term of the Agreement is extended to five years,
 10 Uber will make a fourth payment of \$75,000 to NFB at the beginning of the extended term.

11 **L. Payments To Individual Plaintiffs**

12 Uber will pay a total of \$45,000 which will be apportioned equally among the three
 13 individual Plaintiffs, Michael Pedersen, Michael Kelly, and Michael Hingson. These
 14 payments will resolve the individual Plaintiffs' state law damages claims.

15 **M. Attorneys' Fees, Litigation Expenses, And Costs**

16 No later than fourteen days before the deadline for class members to submit
 17 objections to the Agreement, Class Counsel will move the Court for an award of
 18 reasonable attorneys' fees and costs for their work on this matter up through the effective
 19 date of the Agreement. Class Counsel will include instructions for accessing this motion
 20 in the notice to the class. Uber agrees that the Plaintiffs are entitled to recover reasonable
 21 attorneys' fees and costs for Class Counsel's work on this matter up through the effective
 22 date of the Agreement, but Uber may dispute the amount of attorneys' fees and costs.

23 The Agreement establishes a procedure for recovery of Plaintiffs' reasonable
 24 attorneys' fees and costs for work performed after the Agreement is executed for
 25 monitoring and enforcement. Beginning one year after the effective date, Class Counsel
 26 will annually submit a request for reasonable fees, costs, and expenses for work performed
 27 under this agreement. If Uber contests the requested amount, the Parties will attempt to
 28 negotiate a resolution. The Parties will submit the dispute for resolution by the magistrate

1 judge who retains jurisdiction if the Parties are unable to resolve the dispute within 60
2 days.

N. Objecting To The Settlement Agreement

If this agreement is preliminarily approved and the proposed settlement class is certified, the Parties will distribute notice to the settlement class in the manner approved by this Court within sixty (60) days from the date of the Court's order preliminarily approving the agreement. The notice to class members will describe the agreement and inform them of their right to object to the agreement. The notice disseminated to members of the settlement class is attached as Exhibit 3 to the Paradis Declaration. Uber will pay KCC LLC, a class settlement administrator, to post the notice on a settlement website that KCC will maintain for this settlement, and to publish the notice in publications distributed by the National Federation of the Blind and the American Council of the Blind, the two largest associations of blind persons in the country.

O. Release Of Individual Damages Claims And Class Injunctive Claims

15 In exchange for the injunctive relief in this Agreement, Plaintiffs and the settlement
16 class agree to release any injunctive relief and declaratory relief claims against Uber
17 relating to the subject matter of the litigation. The release will apply to claims that arose
18 before the effective date of the Agreement.

19 In exchange for the damages relief in the Agreement, the named Plaintiffs also
20 release all of their damages claims against Uber relating to the subject matter of the
21 litigation. The settlement class, however, will not release any damages claims.

ARGUMENT

23 I. CERTIFYING THE CLASS IS APPROPRIATE UNDER FED. R. CIV. P.
23(a) AND (b)(2)²

The Parties have stipulated to seek certification of the following settlement class at

²⁶ To be clear, Defendants join in this motion only for settlement purposes and do not waive
²⁷ any defenses they might raise as to class certification or the standing of Plaintiffs to pursue
the relief sought herein should settlement approval not be granted.

1 the time of the fairness hearing:

2 all blind or visually disabled individuals nationwide who travel with the
 3 assistance of Service Animals and who have used, attempted to use, or been
 4 deterred from attempting to use transportation arranged through the Uber
 Rider App.

5 The proposed settlement class is coextensive with the proposed class set forth in the
 6 Second Amended Complaint. The class includes all individuals with service animals who
 7 have been deterred from attempting to use transportation arranged through the Uber Rider
 8 App because the parties agree for settlement purposes that these persons have standing to
 9 allege that Uber has violated their rights under the ADA and equivalent state laws. *Nat'l
 Fed'n of the Blind v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1080-82 (N.D. Cal. 2015).

10 **A. The Proposed Class Meets The Numerosity, Typicality, Commonality,
 11 And Adequacy Requirements Of Fed. R. Civ. P. 23(a)**

12 Plaintiffs assert, and Defendants do not contest for purposes of settlement only, that
 13 the proposed class satisfies the four threshold requirements for class certification under
 14 Federal Rule of Civil Procedure 23(a). These requirements are: (1) numerosity of
 15 potential class members, (2) commonality of factual and legal issues among class
 16 members, (3) typicality of the class representatives' claims, and (4) adequate
 17 representation of class-wide interests by class representatives and class counsel.
 18

19 **1. The Proposed Class Meets The Numerosity Requirement**

20 A class meets the numerosity requirement if the class is so large that joinder of all
 21 members would be impracticable. Fed. R. Civ. P. 23(a)(1); *Evon v. Law Offices of Sidney
 22 Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (certifying class of 262 individuals); *Gay v.
 23 Waiters' & Dairy Lunchmen's Union*, 489 F. Supp. 282 (N.D. Cal. 1980), *aff'd*, 649 F.2d
 24 531 (9th Cir. 1982) (certifying class of 184 identified potential class members). A class
 25 consisting of forty or more individuals may satisfy the numerosity requirement. *Amone v.
 26 Aveiro*, 226 F.R.D. 677, 684-85 (D. Haw. 2005) (certifying class where thirty members
 27 had been identified and class likely had more than forty members). When "the exact size
 28 of the class is unknown, but general knowledge and common sense indicate that it is large,

1 the numerosity requirement is satisfied.” *In re Abbott Laboratories Norvir Anti-Trust*
 2 *Litigation*, Nos. C 04-1511 CW, C 04-4203 CW, 2007 WL 1689899, at *6 (N.D. Cal. Jun.
 3 11, 2007) (quoting 1 Alba Cone & Herbert B. Newberg, *Newberg on Class Actions* § 3.3
 4 (4th ed. 2002)).

5 The proposed class has well over forty members, and likely includes hundreds or
 6 thousands, easily satisfying the numerosity requirement. Plaintiffs have identified seventy-
 7 four blind individuals who use service animals and belong to the class. Paradis Decl. ¶ 33.
 8 There are likely hundreds or thousands of additional class members. Approximately ten
 9 thousand blind individuals use guide dogs in the United States, and blind individuals also
 10 use service animals for other purposes. *Id.* Over one hundred thousand Drivers provide
 11 transportation arranged through the Uber Rider App in over 150 metropolitan areas
 12 nationwide. Thus, Plaintiffs submit that hundreds or thousands of blind individuals who
 13 travel with service animals across the United States have actually used, or have reason to
 14 and the opportunity to use transportation arranged through the Uber Rider App.

15 **2. The Proposed Class Satisfies The Commonality Requirement**

16 The Ninth Circuit construes the commonality requirement permissively. To satisfy
 17 this requirement, there must be “questions of law or fact common to the class.” Fed. R.
 18 Civ. P. 23(a)(2). “[A]ll that Rule 23(a)(2) requires is ‘a single significant question of law
 19 or fact’ that will “generate common answers[.]” *Abdullah v. U.S. Sec. Associates, Inc.*,
 20 731 F.3d 952, 957 (9th Cir. 2012) (quoting *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581,
 21 589 (9th Cir. 2012)). In civil rights actions, “commonality is satisfied where the lawsuit
 22 challenges a system-wide practice or policy that affects all of the putative class members.
 23 Under such circumstances, individual factual differences among class members pose no
 24 obstacle to commonality.” *Parsons v. Ryan*, 754 F.3d 657, 682 (9th Cir. 2014); *Hernandez*
 25 v. *Cnty of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015) (commonality satisfied in
 26 action including ADA claims where defendants operating jail had system-wide policies
 27 and practices concerning inmate medical care, mental health care, and safety needs).

28 Here, Plaintiffs contend, and Defendants do not contest for settlement purposes

1 only, that the commonality requirement is satisfied because Uber has system-wide policies
 2 and practices related to transporting Riders with Service Animals. Plaintiffs contend, and
 3 Defendants do not contest for settlement purposes only, that Uber has a single nationwide
 4 service animal policy, that Riders nationwide submit service animal complaints in a similar
 5 manner, and that Uber will, as part of the settlement, implement uniform practices and
 6 procedures nationwide for responding to complaints that Drivers have refused to transport
 7 Riders with Service Animals. In addition, Drivers' refusal to transport blind Riders with
 8 Service Animals similarly affects members of the proposed class. They are all either
 9 denied transportation and/or deterred from attempting to use transportation arranged
 10 through the Uber Rider App. Plaintiff further contends, and Defendants do not contest for
 11 settlement purposes only, that the determination of whether Uber's policies and practices
 12 concerning transporting blind Riders with Service Animals comply with state and federal
 13 disability law will not vary based on the particular facts of each denial of service or
 14 instance of deterrence.

15 **3. The Proposed Class Satisfies The Typicality Requirement**

16 The named class representatives must have claims that are typical of those of the
 17 class. Fed. R. Civ. P. 23(a)(3). "The test of typicality 'is whether other members have the
 18 same or similar injury, whether the action is based on conduct which is not unique to the
 19 named plaintiffs, and whether other class members have been injured by the same course
 20 of conduct.'" *Evon*, 688 F.3d at 1030 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d
 21 497, 508 (9th Cir. 1992)). Representative claims are typical if they are "reasonably co-
 22 extensive with those of absent class members; they need not be substantially identical."
Meyer v. Portfolio Recovery Associates, LLC, 707 F.3d 1036, 1042 (9th Cir. 2012)
 23 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). "Differing
 24 factual scenarios resulting in a claim of the same nature as other class members does not
 25 defeat typicality." *Parsons*, 754 F.3d at 686 (typicality satisfied where named plaintiffs
 26 were state prisoners who asserted exposure, like other members of putative class, to risk of
 27 future harm by challenged policies and practices, even if named plaintiffs might have
 28

1 previously suffered varying injuries or have differing healthcare needs).

2 Plaintiffs allege, and Defendants do not contest for settlement purposes only, that
 3 the named Plaintiffs' claims are typical of those of the class. Proposed class
 4 representatives Michael Kelly, Michael Pedersen, and Michael Hingson all have the same
 5 disability and travel using the same mobility aid as other class members. They are blind
 6 and use service animals. Plaintiffs contend they have all also alleged the same injury as
 7 other members of the class due to the same conduct. Plaintiffs further contend they have
 8 all alleged denial of transportation or deterrence from attempting to access transportation
 9 through the Uber Rider App because Drivers on the Uber platform have refused to
 10 transport Riders with Service Animals and because Uber has not adopted practices and
 11 procedures adequate to prevent this conduct. Kelly Decl. ¶¶ 5-6; Hingson Decl. ¶ 5;
 12 Pedersen Decl. ¶ 4-5. NFB and NFB-CA are each membership organizations and have
 13 members who have been denied rides because they are blind persons using service animals
 14 and members deterred from using transportation arranged through the Uber Rider App by
 15 the practices at issue. Each has a mission to support full integration and equal access for
 16 blind persons. Plaintiffs contend that neither the claims asserted nor the relief requested in
 17 this action require participation of individual members because injunctive relief has been
 18 the principle goal sought. *Nat'l Fed'n of the Blind v. Target Corp.*, 582 F. Supp. 2d 1185,
 19 1192 (N.D. Cal. 2007) (holding that NFB and NFB-CA had standing to pursue claims on
 20 behalf of class of blind persons).

21 **4. Class Representatives And Experienced Class Counsel Here
 22 Easily Meet The Adequacy Requirement**

23 Finally, named Plaintiffs and class counsel must both adequately represent the class
 24 to satisfy Rule 23(a). To establish adequacy, the named plaintiffs and class counsel must:
 25 (1) not have conflicts of interest with the proposed class, and (2) prosecute the action
 26 vigorously on behalf of the class. *Evon*, 688 F.3d at 1031; *see also In re LinkedIn User
 27 Privacy Litigation*, 309 F.R.D. 573, 584-85 (N.D. Cal. 2015) (adequacy requirement
 28 satisfied where named plaintiff and other members of class shared interest in securing

1 relief, there was no evidence of conflicts of interest, named plaintiff demonstrated
 2 willingness to vigorously prosecute case, and class counsel had relevant experience).

3 Plaintiffs contend, and Defendants do not contest for settlement purposes only, that
 4 no conflicts exist between named Plaintiffs, Class Counsel, and the settlement class with
 5 respect to the negotiation and consummation of the terms of this settlement. All named
 6 Plaintiffs and other class members seek the same relief here: changes to Uber's policies
 7 and practices that will ensure that they consistently receive full and equal access to
 8 transportation arranged through the Uber Rider App. By ensuring that all Drivers are
 9 aware of and agree to comply with their legal and contractual obligation to transport Riders
 10 with Service Animals and enhancing Uber's practices related to enforcing its agreements
 11 with Drivers and the service animal policy, the proposed agreement is crafted to provide
 12 such relief.

13 In addition, Plaintiffs contend that the named Plaintiffs and class counsel have
 14 vigorously pursued relief for the class. Named Plaintiffs have knowledge of the case and
 15 of their duties as class representatives, and are willing to continue to prosecute this action
 16 if necessary. Riccobono Decl. ¶ 5; Willows Decl. ¶ 5; Kelly Decl. ¶ 7; Pedersen Decl. ¶ 6;
 17 Hingson Decl. ¶ 6.

18 Only the individual named Plaintiffs receive damages under the Settlement. These
 19 damages payments are based on multiple instances in which they allege they have been
 20 denied access to or been deterred from attempting to access transportation through the
 21 Uber Rider App. Pedersen Decl. ¶¶ 4-5; Kelly Decl. ¶¶ 5-6; Hingson Decl. ¶ 5. The
 22 damage payments are in exchange for a release of the individual plaintiffs' damages
 23 claims. The damage claims have always been secondary to the goal of seeking equal
 24 access to the Uber transportation services, which the Agreement achieves for the class.
 25 The compromise here that does not provide for damages to absent class members but does
 26 not disturb their damage claims is reasonable. Continuing to litigate the case for damages
 27 purposes would not serve the best interests of the class. *See* Paradis Decl. ¶ 20.

28 Plaintiffs contend that Class Counsel has vigorously pursued relief here on behalf of

1 the class through litigation and eventually through detailed arms-length settlement
 2 negotiations. *See Hanlon*, 150 F.3d at 1021 (vigorous representation measured by
 3 “competency of counsel and … an assessment of the rationale for not pursuing further
 4 litigation”). Class Counsel has served as Class Counsel in numerous and varied disability
 5 rights cases across the country. Paradis Decl. ¶¶ 8-14. Based on Class Counsel’s
 6 experience litigating disability claims concerning transportation access, the practices and
 7 procedures that this Agreement authorizes will successfully ensure that blind Riders with
 8 Service Animals will consistently receive full and equal access to transportation arranged
 9 through the Uber Rider App. The relief that the Agreement provides demonstrates that
 10 further litigation is unnecessary to remedy the class claims. In addition, attempting to
 11 reach a resolution through additional litigation could have taken years and, due to the
 12 novel nature of the claims, might not have yielded a resolution as favorable as that
 13 contained in the proposed settlement.

14 **5. The Ascertainability Requirement Does Not Apply Here, But
 15 Even If It Did, The Class Is Sufficiently Ascertainable**

16 Plaintiffs allege, and Defendants do not contest for settlement purposes only, that
 17 the ascertainability requirement does not apply to classes certified under Rule 23(b)(2). *In*
 18 *re Yahoo Mail Litigation*, 308 F.R.D. 577, 597 (N.D. Cal. 2015) (holding ascertainability
 19 requirement inapplicable to (b)(2) class and noting that Ninth Circuit has not ruled on the
 20 issue but other circuits have held the requirement inapplicable to (b)(2) classes); *Dunakin*
 21 *v. Quigley*, 99 F. Supp. 3d 1297, 1386 (W.D. Wash. 2015); *Shelton v. Bledsoe*, 775 F.3d
 22 554, 563 (3d Cir. 2015); *Shook v. El Paso Cnty.*, 386 F.3d 963, 972 (10th Cir. 2004)
 23 (explaining “lack of identifiability” of class members cannot defeat certification of a (b)(2)
 24 class and “many courts have found Rule 23(b)(2) well suited for cases where the
 25 composition of a class is not readily ascertainable”).

26 Even if the Court concludes that the ascertainability requirement applies, Plaintiffs
 27 allege that the class here is ascertainable. In this circuit, ascertainability may be satisfied if
 28 the class is defined with “objective criteria” and if it is “administratively feasible to

1 determine whether a particular individual is a member of the class.” *Lanovaz v. Twinings*
 2 *North America, Inc.*, 2014 WL 1652338, at *2–3 (N.D. Cal. Apr. 24, 2014) (quoting
 3 *Wolph v. Acer Am. Corp.*, No. 09–01314, 2012 WL 993531, at *1–2 (N.D. Cal. Mar. 23,
 4 2012)); *see also Astiana v Kashi Co.*, 291 F.R.D. 493, 500 (S.D. Cal. 2013) (if “the class
 5 definition is sufficiently definite to identify putative class members,” the challenges of
 6 administering the class will not defeat certification) (citations omitted).

7 Plaintiffs allege the proposed class satisfies this standard. Membership in the class
 8 can be determined by a short list of common characteristics. Class members must (1) have
 9 a vision disability, (2) travel with a service animal, and (3) have used, attempted to use, or
 10 been deterred from using transportation arranged through the Uber Rider App because of
 11 their service animal. Plaintiffs further contend that determining whether a rider with a
 12 vision disability who uses a service animal belongs to the class as a deterred individual is
 13 simple: that person must have learned of reports that Drivers had refused to transport other
 14 blind Riders who use service animals, and as a result of knowledge of such reports,
 15 declined to attempt to use transportation arranged through the Uber Rider App on a
 16 specific occasion.

17 **B. The Proposed Class Meets the Requirements Of Rule 23(b)(2)**

18 Rule 23(b)(2) was designed to facilitate civil rights class actions. *Parsons*, 754 F.3d
 19 at 686. Plaintiffs assert, and Defendants do not contest for settlement purposes only, that it
 20 is “unquestionably satisfied when members of a putative class seek uniform injunctive or
 21 declaratory relief from policies or practices that are generally applicable to the class as a
 22 whole.” *Id.* at 688 (certifying (b)(2) class of prisoners challenging defendant’s centralized
 23 policies and practices of “uniform and statewide application” even where those practices
 24 “may not affect every member of the proposed class … in exactly the same way”); Fed. R.
 25 Civ. P. 23(b)(2). Rule 23(b)(2) is “‘almost automatically satisfied in actions primarily
 26 seeking injunctive relief.’” *Gray v. Golden Gate Nat'l Recreational Area*, 279 F.R.D. 501,
 27 520 (N.D. Cal. 2011) (quoting *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3rd
 28 Cir. 1994)). “Cases challenging an entity’s policies and practices regarding access for the

1 disabled represent the mine run of disability rights class actions certified under Rule
 2 23(b)(2).” *Californians for Disability Rights, Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D.
 3 334, 345 (N.D. Cal. 2008) (certifying (b)(2) class of persons with disabilities challenging
 4 transportation agency’s use of deficient design guidelines and provision of inaccessible
 5 facilities) (collecting cases).

6 Certifying the proposed settlement class under Rule 23(b)(2) is appropriate for
 7 settlement purposes because the Agreement will result in uniform class wide injunctive
 8 relief by modifying Uber’s national policies and practices applicable to the overall class.
 9 Plaintiffs contend that Uber has and/or will have one set of national policies and practices
 10 concerning transportation of blind Riders with Service Animals. All members of the
 11 proposed class are subject to the effects of these common policies and practices.
 12 Certification is also appropriate because the Agreement provides only injunctive relief to
 13 the class, and only incidentally includes payments to the individual named Plaintiffs to
 14 resolve their individual damages claims.

15 **II. PRELIMINARILY APPROVING THE PROPOSED AGREEMENT IS
 16 APPROPRIATE**

17 Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action
 18 on court approval. *Hanlon*, 150 F.3d at 1025. Preliminary approval of a settlement allows
 19 the parties to efficiently determine whether the proposed settlement is “within the range of
 20 possible judicial approval[.]” *Grant v. Capital Management Services, L.P.*, 10-cv-2471–
 21 WQH (BGS), 2013 WL 6499698, at *2 (S.D. Cal. Dec. 11, 2013) (quoting *In re M.L. Stern*
 22 *Overtime Litig.*, 07-CV-0118-BTM (JMA), 2009 WL 995864, at *3 (S.D. Cal. Apr. 13,
 23 2009)). A court may probe the parties’ consensual agreement only “to ensure that it is
 24 ‘fair, adequate, and free from collusion.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th
 25 Cir. 2012) (Quoting *Hanlon*, 150 F.3d at 1027). In addition, there is a presumption of
 26 fairness when “the settlement agreement was reached in arm’s length negotiations after
 27 relevant discovery [has] taken place[.]” *In re Immune Response Securities Litigation*, 97
 28 F. Supp. 2d 1166, 1171 (C.D. Cal. 2007).

1 Courts consider the following factors to determine whether a settlement is fair,
 2 adequate, and reasonable: (1) the strength of the plaintiff's case; (2) the risk, expense,
 3 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
 4 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
 5 completed and the stage of the proceedings; (6) the experience and views of counsel;
 6 (7) the presence of a government participant; and (8) the reaction of the class members to
 7 the proposed settlement. *Lane*, 696 F.3d at 819.³

8 The proposed settlement is fundamentally fair, adequate, and reasonable. By
 9 implementing a set of policies, practices, and procedures concerning Riders with Service
 10 Animals, the Agreement is crafted to provide the class with full and equal access to
 11 transportation available through the Uber Rider App. Uber will significantly enhance its
 12 procedures for informing all new and existing Drivers in the United States about their legal
 13 and contractual obligation to transport Riders with Service Animals, and require that every
 14 driver nationwide agree to transport Riders with Service Animals and provide informed
 15 consent to Uber's service animal policy as a condition of continuing to provide
 16 transportation arranged through the Uber platform. Uber will also enhance its service
 17 animal enforcement practices and investigation and response practices. The Agreement
 18 provides for extensive third-party monitoring and testing, and provides a method to adjust
 19 the injunctive relief if monitoring and testing indicate that modifications are necessary. In
 20 sum, this Agreement comprehensively addresses measures to ensure that class members
 21 receive reliable access to transportation arranged through the Uber Rider App, and it
 22 contains flexibility to address unanticipated service animal access issues that may arise
 23 during the Agreement's term.

24 Additionally, all parties have concluded that the settlement is appropriate after
 25 _____

26 ³ The last two factors are not relevant here. Although the government filed a Statement of
 27 Interest in this Action, the government did not participate in settlement negotiations and is
 28 not a party to the settlement. Preliminary approval also occurs before notice to the class.

1 exchanging pertinent information and weighing the benefits of this agreement against the
 2 risks, costs, and delay of continued litigation. The Parties' thorough settlement
 3 discussions, which included two in-person settlement meetings, a day-long mediation at
 4 JAMS, and other exchanges of information, have provided them with ample information
 5 with which to evaluate the settlement agreement. Paradis Decl. ¶¶ 15, 17-20. For
 6 example, the Parties exchanged information concerning Uber's training of customer
 7 support staff, the on-boarding process for new Drivers on the Uber platform, internal
 8 procedures for investigating service animal complaints, the Uber Driver App, the Uber
 9 driver portal, and Uber's driver-rider matching process. Paradis Decl. ¶¶ 19-20.
 10 Accounting for this information, the Parties concluded that the agreed upon modifications
 11 to Uber's policies, practices, and procedures will provide effective relief to the class while
 12 efficiently and expeditiously resolving disputed issues.

13 In contrast, additional litigation would involve uncertainty and delay for all parties.
 14 The extensive factual issues and novel legal issues in the case would involve extensive
 15 resources at trial, including the use of experts. Both parties agree that the litigation risks
 16 presented by this case are significant.

17 Furthermore, counsel experienced in class action litigation crafted the proposed
 18 agreement. Class counsel are well-qualified litigators with specialized expertise with
 19 major class actions to improve programmatic access for persons with disabilities to
 20 transportation and to other private and public entities. Paradis Decl. ¶¶ 8-14. Counsel for
 21 Defendants also possesses substantial experience defending corporate clients against class
 22 actions. Counsel on both sides view this agreement as a successful compromise that will
 23 resolve class members' claims in a fair and efficient manner.

24 The Agreement is presumptively fair because its negotiation was thorough and
 25 conducted at arm's length. The Parties attended several in-person settlement meetings and
 26 a full-day mediation, and exchanged several versions of the settlement agreement and
 27 addendums before arriving at language and remedies that all parties found acceptable.
 28 Class representatives attended the mediation and participated in settlement negotiations.

1 Pedersen Decl. ¶ 7; Hingson Decl. ¶ 7; Willows Decl. ¶ 6. The named Plaintiffs have
 2 reviewed the terms of the settlement agreement and fully support it. Pedersen Decl. ¶ 8;
 3 Kelly decl. ¶ 9; Hingson Decl. ¶ 8; Willows Decl. ¶ 7; Riccobono Decl. ¶ 7. That the
 4 Parties negotiated an agreement on the injunctive relief for the benefit of the proposed
 5 Settlement Class while leaving determination of Plaintiffs' claims for attorney's fees and
 6 costs for later negotiation and/or for the Court to determine further demonstrates the
 7 absence of any collusion.

8 **III. THE COURT SHOULD DIRECT DISTRIBUTION OF THE NOTICE OF
 SETTLEMENT**

9
 10 Notice to a settlement class certified under Rule 23(b)(2) is within the Court's
 11 discretion. Fed. R. Civ. P. 23(c)(2)(a), (e)(1); *Kim v. Space Pencil, Inc.*, C 11-03796 LB,
 12 2012 WL 5948951, at *4 (N.D. Cal. Nov. 28, 2012). Notice provided under Rule 23(e)
 13 must ““generally describe[] the terms of the settlement in sufficient detail to alert those
 14 with adverse viewpoints to investigate and to come forward and be heard.” *Lane*, 696 F.3d
 15 at 826 (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)).

16 The Parties have agreed on a form of notice and a notice distribution plan that will
 17 effectively inform the class about the settlement and their right to object. The notice
 18 summarizes the key components of the settlement and provides procedures for submitting
 19 objections and for participating in the fairness hearing. KCC LLC, the settlement
 20 administrator, will maintain a settlement website during the notice period, and the Parties
 21 will post the notice and Settlement Agreement on this website. The website and the notice
 22 will be compatible with screen reading technology that blind persons use to operate
 23 computers. Within sixty days of the order preliminarily approving the Agreement, KCC
 24 will also publish the notice in the newsletters and magazines of the National Federation of
 25 the Blind and the American Council of the Blind, the largest associations of blind persons
 26 in the U.S.

27 Class Counsel will also distribute the notice. Class Counsel will electronically mail
 28 the notice in a screen reader compatible format to persons who contacted Class Counsel to

1 complain about access to transportation available through the Uber Rider App for Riders
2 with Service Animals and for whom Class Counsel has email addresses. Class Counsel
3 will also post the notice on the websites of Disability Rights Advocates, Rosen Bien
4 Galvan & Grunfeld, LLP, and TRE Legal Practice for the duration of the notice period.
5 Class Counsel will arrange for the notice to be electronically mailed to the membership
6 email list serves for the NFB, the American Council of the Blind, the National Association
7 of Guide Dog Users, and Guide Dog Users, Inc. Uber will also post a link to the
8 settlement notice on its news blog (newsroom.uber.com).

9 This distribution of the notice is likely to reach thousands of class members. The
10 NFB's magazine is distributed to approximately 35,000 people. Paradis Decl. ¶ 29. Many
11 of the other publications through which notice will be distributed each are circulated to
12 thousands of individuals. *Id.* ¶¶ 29-31. Many recipients of these publications are class
13 members. *Id.* ¶¶ 30-31.

IV. THE COURT SHOULD APPROVE THE PROPOSED SCHEDULING ORDER

16 The Parties are submitting herewith a proposed scheduling order including dates for
17 issuance of the notice, deadlines for objections, a date for the fairness hearing to determine
18 final approval of the agreement, and related orders and deadlines. The Parties request that
19 the Court enter this proposed order with such changes as the Court deems appropriate.

CONCLUSION

21 The proposed settlement will benefit individuals with vision disabilities who travel
22 with service animals nationwide. Plaintiffs hope that this Agreement will serve as a model
23 for the ride sharing industry on ensuring access for Riders with Service Animals. It is a
24 fair, reasonable, and adequate settlement of the claims at issue. The Parties therefore
25 request that the Court approve filing of Plaintiffs' Second Amended Complaint,
26 conditionally certify the proposed settlement class, give preliminary approval to the

27 | //

28 | //

1 proposed agreement, approve the proposed notice, and issue the proposed scheduling
2 order, including setting a date for a fairness hearing.

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4 DATED: April 29, 2016

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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7 By:


Michael S. Nunez

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9 Attorneys for Plaintiffs

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11 DATED: April 29, 2016

LITTLER MENDELSON, P.C.

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13 By:


Andrew M. Spurcise

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15 Attorneys for Defendants

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1 **FILER'S ATTESTATION**

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3 Pursuant to Civil Local Rule 5-1(i), I, Michael S. Nunez, attest that concurrence in
4 the filing of this document has been obtained.

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7 
8 Michael S. Nunez

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